

122 FERC ¶ 61,012
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 7, 2008

In Reply Refer To:
Docket No. RP06-407-000

Hogan & Hartson, LLP
Attn: Lee A. Alexander
Columbia Square
555 13th Street, N.W.
Washington, DC 20004

Dear Mr. Alexander:

1. On October 31, 2007, Gas Transmission Northwest Corporation (GTN) filed a Stipulation and Agreement of Settlement (Settlement) in the captioned proceeding.
2. Initial Comments in support of the Settlement were filed by GTN, the California Public Utilities Commission, Commission Trial Staff, the Pacific Northwest Shipper Group, Pacific Gas and Electric Company, San Diego Gas & Electric and Southern California Gas Company, BP Canada Energy Marketing Corp. and IGI Resources, Inc., the Indicated Shippers, and PPM Energy, Inc. No reply comments were filed. On December 5, 2007, the Presiding Judge certified the Offer of Settlement to the Commission as uncontested.
3. Article I describes the procedural history of this docket.
4. Article II provides that the Settlement is the product of extensive settlement negotiations and reflects a compromise among many parties with conflicting interests. Article II also stipulates that the Settlement resolves all issues set for technical conference and hearing in the Suspension Order and the Technical Conference Order and that it must be reviewed and approved in its entirety in order to become effective.
5. Article III.A defines a "Settling Party" and states that if the Commission approves the Settlement subject to modification or condition then the Settling Parties shall determine whether the modification(s) and condition(s) may be accepted, or whether mutually agreeable changes to the Settlement may be made. A Settling Party may seek rehearing of a Commission order approving the Settlement subject to modification(s) or

condition(s) and all other Settling Parties shall use good faith efforts to file a similar request for rehearing.

6. Article III.B defines a “Contesting Party” and states that such Contesting Party shall be charged the maximum tariff rates that became effective on January 1, 2007, subject to refund, until the Commission issues an order on the merits resolving the appropriate treatment of such Contesting Party and the rates that are applicable to such party are placed into effect.

7. Article IV governs when the Settlement shall become effective. If the Commission issues an order approving the Settlement subject to modification(s) or condition(s), GTN has a right to seek rehearing, and the Settling Parties may, upon notice, elect not to be bound by the Settlement and/or seek rehearing of such order. GTN may also withdraw the Settlement if such an order is issued or if a Settling Party elects not to be bound by the Settlement. A Settling Party that elects not to be bound by the Settlement shall be considered a Contesting Party as of such date and GTN shall have the right to charge such a Contesting Party for services rendered as provided for in Article VI.B.2 and the rates that took effect on January 1, 2007, subject to refund, shall apply to such Contesting Party until such time as the Commission issues an order establishing the rates that should apply to such Contesting Party. If GTN withdraws the Settlement, then all parties’ rights and obligations under the Settlement are deemed null and void and all parties’ rights and obligations return to the status quo ante. GTN shall be entitled to take all necessary actions to place GTN in the position it would have been had the Settlement never been filed.

8. Article V.A establishes a five-year Moratorium period during which GTN and the Settling Parties are prohibited from taking certain actions, including any filings under sections 4 and 5 of the Natural Gas Act (NGA) that would be inconsistent with the Settlement. Article V.A also establishes that the standard of review for any proposed change to the terms of the settlement shall be the *Mobile-Sierra* “public interest” standard.¹ Article V.B establishes that, after the Moratorium, GTN shall file a general rate case pursuant to section 4 of the NGA proposing rates to become effective no later than January 1, 2014. Article V.C provides that GTN shall no longer be bound by the

¹As a general matter, parties may bind the Commission to a public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case we find that the public interest standard should apply.

Moratorium if, during the Moratorium, as a result of certain actions by the United States Congress or the Commission, GTN's annual cost of service is increased by a certain specified amount.

9. Article VI.A sets the rates for transportation services under the Settlement and, alternatively, the rates that apply in the event the Settlement is rejected or withdrawn. Article VI.B states that GTN shall provide Interim Rate Relief by filing a motion to place the Settlement rates into effect on the first day of the month following the month in which the Settlement is filed. Article VI.B also provides that, if the settlement is rejected by the Commission or withdrawn by GTN, GTN shall have the right to charge each Settling Party to the extent such Settling Party has paid a lower rate by virtue of the Interim Rate Relief. Article VI.C establishes a general refund equal to the difference between the rates collected from each Settling Party under each contract and the Settlement Rates applicable to the service received by such Settling Party over the period from January 1, 2007, through the date that the Interim Rate Relief became effective, plus interest at the applicable FERC interest rate.

10. Article VI.D states that the Settlement rates reflect rolled-in rate treatment of all GTN facilities costs and system capacity as of the date of the Settlement. Article VI.E provides that GTN shall establish a seasonal rate design for short-term firm transportation and interruptible transportation and how such rates will be established from year to year. Article VI.F provides that during the Moratorium, GTN will not make any filing proposing a market-based rate for interruptible transportation service and GTN will withdraw its request for rehearing of the Commission's Order Denying Market-Based Rates within ten business days of the expiration of GTN's final right to withdraw the Settlement pursuant to Article IV. Article VI.G provides that GTN and the Settling Parties will implement a Pipeline Integrity Plan Surcharge to recover costs incurred under the Pipeline Safety Improvement Act of 2002 and the Commission's Order on Accounting for Pipeline Assessment Costs in Docket No. AI05-1-000.

11. Article VII provides that the annual depreciation rate for all mainline transmission and expansion facilities shall be two percent. Article VII also lists the depreciation rates that shall be applicable to other lateral transmission facilities and general plant items.

12. Article VIII.A provides that GTN will implement the rulings of the Commission's Order on Technical Conference as reflected in Tariff sheets that are attached as Appendix B to the Settlement. Article VIII.B provides that during the Moratorium, GTN will not seek to modify its Tariff to require a shipper exercising its right of first refusal to match a bid for expansion capacity in order to retain its capacity. Article VIII.C states that GTN will file actual Tariff Sheets as they appear in Appendix B within thirty days after the Settlement becomes effective. Article VIII.D provides that GTN and the Settling Parties will withdraw their requests for rehearing of the Commission's Order on Technical

Conference within ten business days after GTN's right to withdraw the Settlement pursuant to Article IV expires.

13. Article IX.A provides for the execution of three new agreements by PG&E that serve to extend PG&E's current firm service obligation on GTN for a period of years. Article IX.B provides that, if the Settlement is filed with the Commission by October 31, 2007, PG&E shall not be obligated to assume any obligations or costs associated with Contract No. F-09998. Article IX.B also establishes procedures under which PG&E will execute a new firm service agreement for the capacity that is the subject of Contract No. F-09998 should the Settlement be rejected by the Commission or withdrawn by GTN. Article IX.C provides that PG&E will execute a new firm service agreement on behalf of its Electric Fuels Function, subject to certain contingencies relating to PG&E's acquisition of upstream capacity. Article IX.D provides for a one-year extension of a certain service agreement with Northwest Natural Gas Company.

14. Article X.A describes the funding vehicles that have been established to satisfy GTN's post-retirement benefits other than pensions (PBOP). Article X.B establishes how GTN will fund PBOP payments during the Moratorium period and how GTN may treat PBOP expenses in its next general section 4 rate case. Article X.B also provides that GTN's current end-of-test-period regulatory liability in FERC Account No. 254 related to its funding of PBOP shall be deemed to be zero. Article X.C establishes types of disbursements that GTN may make from the PBOP trusts. Article X.D provides that, if GTN terminates its obligation to provide PBOP benefits, it will seek permission from the IRS to provide rebates to its shippers.

15. Article XI provides that the Settlement supersedes in its entirety the Commission-approved settlement in GTN's last section 4 rate case (the 1996 Settlement) and that as of the date the Settlement becomes effective, the 1996 Settlement shall be null and void.

16. Article XII generally states that no party shall be bound or prejudiced by the Settlement unless it becomes effective in accordance with its provisions.

17. Article XIII provides that the Settlement is made pursuant to Rule 602 of the Commission's Rules of Practice and Procedure and until it is approved by the Commission and becomes effective, it shall be privileged and of no effect, and shall not be admissible in evidence.

18. Article XIV provides that Commission approval of the Settlement shall constitute Commission authorization and approval for GTN to implement the rates and Tariff changes reflected in the Settlement without suspension or conditions, other than those specified in the Settlement. Article XIV also states that the Commission's approval of the Settlement shall constitute waiver of compliance with the requirements of the

Commission's Rules and Regulations under the Natural Gas Act and Natural Gas Policy Act, including, but not limited to, Parts 154, 157, 201, and 284.

19. The subject Settlement is fair and reasonable and in the public interest and hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission. Commissioners Kelly and Wellinghoff
dissenting in part with separate statements
attached.

Kimberly D. Bose,
Secretary.

cc: To All Parties

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Gas Transmission Northwest Corporation

Docket No. RP06-407-000

(Issued January 7, 2008)

KELLY, Commissioner, *dissenting in part*:

The settling parties request that the *Mobile-Sierra* “public interest” standard of review apply to any future changes to the settlement that may be proposed by a party, a non-party, or the Commission acting *sua sponte*. This settlement agreement sets forth rates, terms and conditions for service under Gas Transmission Northwest Corporation’s generally applicable tariff.

I have explained in *Transcontinental Gas Pipe Line Corporation*¹ that I do not believe the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of such a provision. As I have previously noted,² this is particularly the case where, as here, the settlement agreement will impact a generally applicable tariff under which all customers take service, including any new customers that did not have the opportunity to participate in the settlement negotiations.

Accordingly, I dissent in part from this order.

Suede G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

² *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).